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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,046	05/08/2006	Timothy John Warner	920602-98737	6824

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EXAMINER
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HYLINSKI, ALYSSA MARIE

ART UNIT	PAPER NUMBER
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3711

NOTIFICATION DATE	DELIVERY MODE
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02/17/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patent-ch@btlaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,046	<b>Applicant(s)</b> WARNER, TIMOTHY JOHN	
	<b>Examiner</b> Alyssa M. Hylinski	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/29/08</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 41 and 54-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 41-44, 46, 49, 52, 54 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle (4547160) and Thompson (2031194). Labelle discloses a kit or parts forming a construction toy having a plurality of building blocks (3-11) of differing length and shape (Fig. 6) and a plurality of pegs (13) for joining the blocks together and to other items such as a base item (12) for creating structures (Fig. 5). A basic block (2) is in the form of a cube and a plurality of larger K element blocks are whole number multiples (K) of the basic block such that a length dimension of a side face of the larger blocks is a whole number multiple (K) of an edge length of the cube

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block and the cross section of all the blocks is the same (Fig. 6, column 1 line 67-column 2 line 12). The K element blocks are formed with six faces each having similarly sized peg openings therein and configured such that two opposing side faces will include K or N+1 equally spaced apart peg receiving openings and two opposing adjoining side faces will include K-1 or N equally spaced apart peg openings and a centrally located single peg opening in each of the end faces (Fig. 6, column 3 line 59-68). The pegs have a circular cross section and are formed from a resiliently deformable or flexible material that would enable the pegs to be bent to form knees or elbow joints (Fig. 7, column 4 lines 1-6). Thompson discloses a kit of parts forming a construction toy with a plurality of blocks (1) wherein the end faces of the block are inclined with a 15 degree bevel so as to form a regular solid trapezium having an angle formed between an end face (3, 4) and a side face (6) of the block being 75 degrees such that in use the blocks can be joined either end to end to form a line or to define an angle therebetween (Fig. 1). Since both Labelle and Thompson relate to construction sets it would have been obvious to one of ordinary skill in the art from the teaching of Thompson to configure some of the blocks of Labelle with inclined end faces for the predictable result of enabling greater versatility in the building of structures by enabling angles between the block elements to be formed. Furthermore, changes in shape have been held to be an obvious matter of design choice. *See In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). The combination creates a kit that can be used to construct a model structure wherein the blocks can be fitted together using the pegs to form a lattice or tiered assemblies that could include a stadium or theatre.

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5. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above. The references disclose the basic inventive concept, substantially as claimed with the exception of the pegs being formed of rigid material and the blocks being resiliently deformable. The examiner notes that it would have been an obvious matter of design choice to form the block out of resilient material and the peg out of rigid material since the examiner notes that mere selection of known materials as recited in the claims, on the basis of suitability for the intended use would be entirely obvious. *See in re Leshin, 125 USPQ 416 (CCPA 1960)*. Therefore, it would have been obvious to one of ordinary skill in the art to modify Labelle such that the block was formed of resilient material and the peg was formed of rigid material as recited in the claims in order to use known materials suitable for the intended use.

6. Claims 47 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Mueller (5009599). Labelle and Thompson disclose the basic inventive concept with the exception the pegs being formed with knee or elbow joints and some of the openings in the blocks are blocked at a predetermined depth. Mueller discloses a construction block toy having peg openings (17) therein that are limited to a certain depth (Figs. 5 & 6) and pegs configured such that some of the pegs are formed with angled joints to permit blocks to be angled relative to one another (Fig. 7). It would have been obvious to one of ordinary skill in the art from the teaching of Mueller to modify the device formed by Labelle and Thompson to include different depth peg openings and angled

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pegs for the predictable result of enabling more versatility and creativity in the assemblage of structures therewith (abstract).

7. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Nakama (4753622). Labelle and Thompson disclose the basic inventive concept, with the exception of each face of the block being differently colored. Nakama discloses a construction toy set having blocks configured with different colors (column 2 lines 3-8). It would have been obvious to one of ordinary skill in the art from the teaching of Nakama to make the faces of the blocks of the references different colors in order to create more interesting and visually appealing structures.

8. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Much (4182072). Labelle and Thompson disclose the basic inventive concept, with the exception of the block being hollow. Much discloses a hollow construction toy set configured with a plurality of openings therein for peg elements (Figs. 5 & 9). Since both Labelle and Much relate to construction toy sets it would have been obvious to substitute or replace one configuration for the blocks for another for the predictable result of forming a construction set that can be used to create interesting structures.

9. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Mott (5938497). Mott discloses a construction toy block with peg openings and pegs configured in shapes that prevent rotation relative to the peg and block (Figs. 2C & 5). It would have

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been obvious to one of ordinary skill in the art to configure the peg openings and pegs of Labelle as disclosed by Mott for the predictable result of securing the elements together in a way to limit rotation of the elements relative to each other. In regard to the shapes being that of a triangle, square or hexagon the examiner notes that changes in shape have been held to be an obvious matter of design choice. *See In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

10. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above and further in view of Blanco (3882630). Labelle discloses rod members that can be cut or broken apart so as to form lengths suitable for interconnecting with the block elements (column 4 lines 18-21). Blanco discloses a construction set having notches or cuts (8) formed at regular intervals therein for enabling the construction elements to be easily cut or broken up into desired lengths (Fig. 2, column 2 lines 54-62). It would have been obvious to one of ordinary skill in the art from the teaching of Blanco to include cuts on the pegs of Labelle for the predictable result of enabling the pegs to be easily separated into desired lengths to increase the connection combinations.

11. Claim 56-62 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Ryaa (D314991) and Jarnros (D371581). Ryaa discloses a tiered cladding panel having seats thereon that can be secured to construction block devices (Fig. 1). It would have been obvious to one of ordinary skill in the art to include a cladding panel to the kit of Labelle and Thompson in order to enable more interesting configurations and structures

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to be built. In regard to have connecting member taking the form of openings or pegs that protrude from a rear face of the panel, Jarnros discloses a tiered device having connecting elements in the form of openings located on a rear side thereof for engaging peg members (Fig. 2) for enabling the element to be attached to other elements. It would have been obvious to one of ordinary skill in the art to include connecting structure on a rear of the panel of Ryaa for the predictable result of enabling it to be easily connected to other members. In regard to the use of pegs as the connecting means on the rear of the cladding panel the examiner notes that such a modification would have been an obvious matter of design choice since substituting one known element for another would achieve the predictable result of connecting construction elements together.

12. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle and Thompson as applied above for claim 41 and further in view of Bursell (1935542).

Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labelle, Thompson, Ryaa and Jarnros as applied above for claim 56 and further in view of Bursell (1935542). The references disclose the basic inventive concept, with the exception of a baseboard having a matrix of holes therein for receiving pegs. Bursell discloses a construction kit having a baseboard (Fig. 2) having a matrix of holes (2) for receiving peg members (4) therein to create structures (Fig. 1). It would have been obvious to one of ordinary skill in the art from the teaching of Bursell to include a baseboard in the construction set of the references for the predictable result of enabling the creation of interesting and versatile structures

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH  
/Gene Kim/  
Supervisory Patent Examiner, Art Unit 3711